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Honorable Marsha J Pechman

  
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JUL 25 2001  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY \_\_\_\_\_ DEPUTY

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RAHN D. JACKSON, *et al*,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. C01-775P

**JOINT STATUS REPORT AND  
DISCOVERY PLAN**

Pursuant to this Court's Order regarding Initial Disclosures, Joint Status Report, and Early Settlement dated June 13, 2001, the parties have conferred and provide this Court with the following Joint Status Report and Discovery Plan. The following information corresponds by paragraph numbers to the Order

**1 Nature and Complexity of the Case**

Plaintiffs, who are six former employees and one current employee of Microsoft Corporation ("Microsoft" or "the Company"), bring this class action to challenge an alleged pattern and practice of race discrimination and retaliation and other

JOINT STATUS REPORT AND DISCOVERY PLAN

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PAUL, HASTINGS, JANOFSKY & WALKER LLP  
555 South Flower Street, Suite 2300  
Los Angeles, California 90071-2371  
Telephone (213) 683-6000  
Facsimile (213) 627-0705

1 discriminatory treatment of African-American employees of Microsoft Corporation  
 2 (Plaintiff Derrick Washington is deceased ) The Plaintiffs allege that the employment  
 3 policies and practices of Microsoft have the effect and have been undertaken with the  
 4 purpose of denying promotional opportunities and equal compensation to qualified  
 5 African-American employees in violation of Title VII of the Civil Rights Act of 1964, as  
 6 amended, 42 U.S.C. §2000(e), the Civil Rights Act of 1991, 42 U.S.C. §1981a, and the  
 7 Civil Rights Act of 1871, 42 U.S.C. §1981.

8 Microsoft denies discrimination against the named Plaintiffs and against any  
 9 group or class of individuals. It submits that there is no basis for certification of a class  
 10 and that this case should be consolidated for all proceedings through the class certification  
 11 phase of the litigation with Monique Donaldson, et al v Microsoft, C00-1684, pursuant to  
 12 and to the extent set forth in the Court's Order of Consolidation filed March 7, 2001.

## 13 2. Appropriate Form of ADR

14 Arbitration is not appropriate for this matter. Direct settlement negotiations  
 15 and mediation may be appropriate after the parties have had the opportunity to take  
 16 discovery.

## 17 3. Timing of Mediation

18 Plaintiffs would like mediation after the Plaintiffs' depositions and before  
 19 the Court's ruling on class certification.

20 Microsoft submits that any mediation of this case should be consolidated  
 21 with the Donaldson case mediation that will follow the Court's ruling on the motion for  
 22 class certification

## 23 4. Proposed Deadline for Joining Additional Parties

24 No additional named plaintiffs or defendants will be added.  
 25  
 26

1           **5. Proposed Discovery Plan**

2           a. The FRCP 26(f) Conference took place on June 21, 2001. Initial  
3 disclosures under FRCP 26(a) were waived pursuant to stipulation filed with the United  
4 States District Court for the District of Columbia on or about August 25, 2000 in the  
5 parties' Joint L.Cv R. 16 3 Meet and Confer Report.

6           b. Discovery is required by Plaintiffs on the issue of whether Microsoft  
7 discriminated against Plaintiffs and members of the African-American class in  
8 evaluations, promotion, compensation and other treatment or engaged in retaliation.

9                     Discovery is required by Microsoft on the claims of Plaintiffs and  
10 those they purport to represent as well as their purported damages and Microsoft's  
11 defenses

12                     Plaintiffs do not believe that discovery should be conducted in  
13 phases. Microsoft believes that discovery on class issues should be concluded first and  
14 propose a cut-off date of August 31, 2001 for such purposes because the time for filing a  
15 motion to certify the class has long-since passed.

16           c. The parties do not believe that depositions should automatically be  
17 limited to seven (7) hours. No other changes in limitations under the Federal and Local  
18 Civil Rules are anticipated at this time

19           d. In order to minimize expense, the parties agree that identical  
20 duplicate documents need not be produced. Duplicate emails need not be produced from  
21 every recipient as long as all recipients, including copied and blind-copied recipients, are  
22 shown on the face of the email. In addition, the parties will meet and confer to resolve  
23 disputes to the extent practicable without the need for court intervention.

24           e. The parties are not requesting any other order under FRCP 26(c) or  
25 Local Rule CR 16(b) and (c) at this time.

f. The depositions of the named Plaintiffs were set to correspond to the availability of their counsel as follows:

-Tanya Barbour July 5 (partial day) at Paul, Hastings in Washington, D.C.; July 24 session off calendar pending her promptly filing a motion to dismiss her claims;

-Jozette Joyner. July 6 at Paul, Hastings in Washington, D.C.; July 25 session off calendar at her request and to be rescheduled,

-Derrick Washington July 12 and 13 at Paul, Hastings in Washington, D.C., Mr. Washington did not appear because he did not receive notice and has since passed away,

-Rahn Jackson: July 26 and 27, commencing at 8 a.m. at his counsel's request, at Paul, Hastings in Washington, D.C.;

-James Pipkins: July 30 and 31 at Preston, Gates in Seattle

-Pamela Odom: August 1 at Preston, Gates in Seattle.

-Chima Echeuruo: August 2 and 3 at Preston, Gates in Seattle

It is expressly understood that Mr. Oscar Desper and his law firm are not responsible for defending or participating in any of these depositions

#### **6 Discovery Cut-off**

The Plaintiffs submit that discovery can be completed by February 28, 2002. This deadline is not dependent on any rulings on class certification because the Plaintiffs oppose bifurcating discovery on class certification and the merits. The Plaintiffs' position is that discovery should not be bifurcated because it is inefficient and will lead to unnecessary discovery disputes.

Microsoft believes that discovery on class issues should be concluded first and proposes a cut-off date of August 31, 2001 for such purposes because the time for

1 filing a motion to certify the class has long-since passed. Microsoft proposes a discovery  
 2 cutoff date of October 31, 2001 for all other issues, which is consistent with the discovery  
 3 cutoff in the Donaldson case. Microsoft notes that this Jackson case, filed in June, 2000,  
 4 has been pending longer than Donaldson, filed in October 2000.

5       7       **Magistrate**

6               The parties do not consent to referring the case to a full-time magistrate  
 7 judge pursuant to 28 U.S.C. § 636(c) and Local Rule MJR 13.

8       8       **Bifurcating Trial**

9               The parties submit that any decisions about bifurcation of the trial should  
 10 await a ruling by the Court on any motion for class certification because it will impact the  
 11 issues to be tried and their scope. If the Plaintiffs were entitled to a jury trial, it is  
 12 Microsoft's position that the same jury must hear both liability and damages

13       9       **Pretrial Statements and Order**

14               The parties believe that the pretrial statements and pretrial order called for  
 15 by Local Rules 16(e), (h), (i) and (1), and 16.1 should apply to this case

16       10       **Suggestions for Shortening Case**

17               Plaintiffs suggest mediation may shorten this case

18       11       **Date of Trial**

19               Plaintiffs will be ready for trial before April 1, 2002. The parties request  
 20 that the Court order the parties to meet and submit a further status report with a proposed  
 21 trial date after the Court rules on the consolidation of this case with the Donaldson case  
 22 and any motion for class certification.

23       12.       **Jury Trial**

24               Plaintiffs request a jury trial.

1           13     **Number of Trial Days Required**

2           The parties submit that it is not possible to give a realistic trial estimate  
3 before the Court rules on any motion for class certification. Microsoft requests that the  
4 Court order the parties to meet and submit a further status report with a proposed trial  
5 estimate after the Court rules on any motion for class certification because it will impact  
6 the scope of the trial.

7           14     **Trial Counsel**

8           Expected trial counsel identified at this time are as follows:

9           Trial Counsel for Plaintiffs

10          Willie E. Gary  
11          Maria Sperando  
12          Tricia P. Hoffler  
13          Gary, Williams, Parenti, Finney, Lewis McManus, Watson & Sperando  
14          Waterside Professional Building  
15          221 East Osceola  
16          Stuart, Florida 34994  
17          (561) 283-8260

18          Roy J. Bucholz  
19          Bucholtz & Culbertson, P.C.  
20          1801 Reston Parkway, Suite 302  
21          Reston, Virginia 20190  
22          (703) 471-9660

23          Oscar E. Desper III  
24          Harrell, Desper, Connell, Hunter & Gautschi, PLLC  
25          600 Puget Sound Plaza  
26          1325 Fourth Avenue  
27          Seattle, Washington 98101  
28          (206) 583-0050

29          Trial Counsel for Defendant.

30          Kirk A. Dublin  
31          Preston Gates Ellis, LLP  
32          701 Fifth Avenue, Suite 5000  
33          Seattle, WA 98104-7078  
34          (206) 623-7580

1 Nancy L. Abell  
2 Patricia M. Berry  
3 Paul, Hastings, Janofsky & Walker, LLP, 23rd Floor  
4 555 South Flower Street  
5 Los Angeles, CA 90071-2371  
6 (213) 683-6000

7 Barbara B. Brown  
8 Neal Mollen  
9 Paul, Hastings, Janofsky & Walker, LLP  
10 1299 Pennsylvania Avenue, N W , 10th Floor  
11 Washington, D.C. 20004  
12 (202) 508-9500

13 William Murphy, Jr  
14 William H. Murphy, III  
15 William H. Murphy, Jr & Associates  
16 12 West Madison Street  
17 Baltimore, Maryland 21201  
18 (410) 539-6500

19 **15. Service**

20 All parties have been served and have participated in the FRCP 26(f)  
21 Conference

22 **16. Scheduling Conference**

23 Microsoft requests a telephonic scheduling conference to discuss item 17  
24 below

25 **17. Consolidation with Donaldson**

26 Plaintiffs oppose consolidation with Donaldson because Plaintiffs here seek  
to represent only African-Americans whereas Plaintiff Donaldson also seeks to represent  
women.

Microsoft submits that the Donaldson and Jackson cases must be  
consolidated for all proceedings through the class certification phase of the litigation All  
issues raised in the Jackson case are also raised in the Donaldson case The Donaldson  
class action was filed on October 4, 2000. At that time, Rahn Jackson's individual case  
was pending. The Jackson case did not seek to represent any class until January 2001,

1 after discovery in the Donaldson class action was well under way. Microsoft should not  
2 be required to duplicate the enormous expense of the Donaldson class discovery that  
3 already has covered the same issues, nor should the Court and Microsoft be required to  
4 twice consider whether an African-American class should be certified. Microsoft further  
5 notes that the United States District Court for the District of Columbia has already  
6 dismissed claims predating 1997 in the Jackson case as they are barred by the limitations  
7 period and that the Donaldson limitation's period on the Section 1981 race claim  
8 commences three months earlier than the Jackson limitations period. Thus, no class  
9 interest is secured by maintaining the Jackson class separately.



1 DATED: July 25, 2001

Respectfully submitted,

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4 Nancy L. Abell  
5 Appearing Pro Hac Vice  
6 Paul, Hastings, Janofsky & Walker LLP  
7 555 South Flower Street, 23rd Floor  
8 Los Angeles, CA 90071-2371  
9 Phone (213) 683-6162  
10 Fax (213) 627-0705

11 

12 Kirk A. Dublin, WA State Bar # 05980  
13 Preston Gates Ellis, LLP  
14 701 Fifth Avenue, Suite 5000  
15 Seattle, WA 98104-7078  
16 Phone. (206) 623-7580  
17 Fax: (206) 623-7022

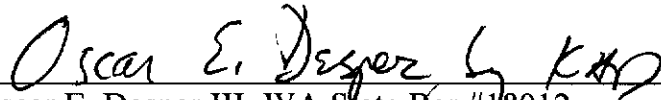
18 Barbara B. Brown  
19 Appearing Pro Hac Vice  
20 Paul, Hastings, Janofsky & Walker LLP  
21 1299 Pennsylvania Avenue, N.W., 10th Floor  
22 Washington, D C 20004  
23 Phone (202) 508-9551  
24 Fax: (202) 508-9700

25 William Murphy, Jr  
26 William H. Murphy, III  
William H. Murphy, Jr & Associates  
12 West Madison Street  
Baltimore, Maryland 21201  
Phone: (410) 539-6500  
Fax: (410) 539-6599

*Counsel of Defendant*

1 DATED. July 25, 2001

Respectfully submitted,

3 

4 Oscar E. Desper III, WA State Bar #18012  
5 Harrell, Desper, Connell, Hunter & Gautschi, PLLC  
6 600 Puget Sound Plaza  
7 1325 Fourth Avenue  
8 Seattle, Washington 98101  
9 Phone: (206) 583-0050  
10 Fax (206) 583-0051

*Counsel for Plaintiffs*